

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**MOTION FOR AN ORDER AUTHORIZING THE DISTRICT COURT
TO CONSIDER A SUCCESSIVE OR SECOND HABEAS CORPUS APPLICATION
PURSUANT to 28 U.S.C. §§ 2244 (b), 2254
BY A PRISONER IN STATE CUSTODY**

NAME: KONSTANTIN RUDENKO	
PLACE OF CONFINEMENT: BARE HILL CORR. FACILITY	PRISONER NUMBER: 14-A-2378

RECEIVED
2020 JAN 21 PM 3:39
U.S. COURT OF APPEALS
SECOND CIRCUIT

Instructions—Read Carefully

- (1) This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. All documents must be on 8½ x 11 inch paper; the Court will not accept other paper sizes. Any false statements of a material fact may serve as the basis for prosecution and conviction for perjury.
- (2) All questions must be answered concisely in the proper space on the form.
- (3) Movant seeking leave to file a second or successive petition is required to use this form. In capital cases only, the use of this form is optional.
- (4) Movant may use additional pages only to explain additional grounds for relief and set forth additional facts and documents supporting any alleged grounds. Separate petitions, motions, briefs, arguments, etc. should not be submitted.
- (5) In capital cases only, the use of this form is optional, and separate petitions, motions, briefs, arguments, may be submitted.

- (6) Movant must show in the motion to the Court of Appeals that the claim to be presented in a second or successive habeas corpus application was not presented in a prior application and that
- (1) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
 - (2)
 - (a) the facts underlying the claim could not have been discovered previously through the exercise of due diligence; and
 - (b) those facts, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.
28 U.S.C. § 2244 (b)
- (7) Send the completed motion, the original and two copies, to:

**Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Court House
40 Foley Square
New York, New York 10007**

MOTION

1. (a) Name and location of court which entered the judgment of conviction under attack
KINGS COUNTY COURT
(b) Case number #5272/2012
2. Date of judgment of conviction May 25, 2014
3. Length of sentence 15 Years Sentencing Judge GUZMAN
4. Nature of offense or offenses for which you were convicted: Assault
in the First Degree, and Criminal Possession of
a Weapon in the Third Degree.
5. Have you ever filed a post-conviction petition, application, or motion for collateral relief in any federal court related to this conviction and sentence?
Yes ☒ No ☐
If "yes", how many times? 1 (if more than one, complete 6 and 7 below as necessary)
(a) Name of court KINGS COUNTY COURT
(b) Case number 5272/2012
(c) Nature of proceeding prior to sentencing.

(d) Grounds raised (list all grounds; use extra pages if necessary)
1- Brady Violation; 2- Deficient performance of
co-counsel; 3- Fraud; 4- Insufficient evidence.

(e) Did you receive an evidentiary hearing on your petition, application, or motion?
Yes ☐ No ☒
(f) Result _____
(g) Date of result May 25, 2014
6. As to any second federal petition, application, or motion, give the same information:
(a) Name of court _____
(b) Case number _____

(c) Nature of proceeding 330.30 motion

(d) Grounds raised (list all grounds; use extra pages if necessary)

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☐

(f) Result

(g) Date of result

7. As to any third federal petition, application, or motion, give the same information:

(a) Name of court

(b) Case number

(c) Nature of proceeding

(d) Grounds raised (list all grounds; use extra pages if necessary)

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☐

(f) Result

(g) Date of result

8. Did you appeal the result of any action taken on your federal petition, application, or motion? (Use extra pages to reflect additional petitions if necessary)

(1) First petition, etc. No ☒ Yes ☐ Appeal No. _____

(2) Second petition, etc. No ☐ Yes ☐ Appeal No. _____

(3) Third petition, etc. No ☐ Yes ☐ Appeal No. _____

**First and only petition appeals to United States
Second Circuit Court of Appeals.**

9. If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not: _____

10. State concisely every ground on which you now claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

A. Ground one: **See Attachment**

Supporting FACTS (tell your story briefly without citing cases or law):

See Attachment

Was this claim raised in a prior federal petition, application, or motion?

Yes ☒ No ☐ **Raised but never addressed.**

Does this claim rely on a "new rule of constitutional law?" Yes ☐ No ☒

If "yes," state the new rule of constitutional law (give case name and citation):

Does this claim rely on "newly discovered evidence?" Yes ☐ No ☒

If "yes," briefly describe the newly discovered evidence, attach a copy (if available), state when you obtained it, and why it was not previously available to you.

B. Ground two: _____

Supporting FACTS (tell your story briefly without citing cases or law):

Was this claim raised in a prior federal petition, application, or motion?

Yes ☒ No ☐ **Yes, but never addressed.**

Does this claim rely on a "new rule of constitutional law?" Yes ☐ No ☒

If "yes," state the new rule of constitutional law (give case name and citation):

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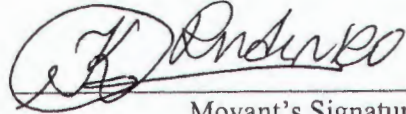
If "yes," briefly describe the newly discovered evidence, attach a copy (if available), state when you obtained it, and why it was not previously available to you

[Additional grounds and facts and documents supporting any alleged grounds may be set forth on extra pages if necessary]

11. Do you have any motion or appeal now pending in any court as to the judgment now under attack? Yes ☒ No ☐

If yes, Name of court U.S. SUPREME COURT Case number _____

Wherefore, movant prays that the United States Court of Appeals for the Second Circuit grant an Order Authorizing the District Court to Consider Applicant's Second or Successive Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254.

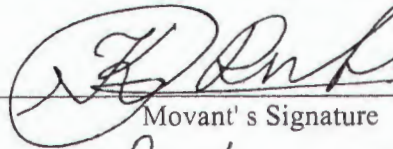


Movant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this motion are true and correct.

Executed on

1/19/2020
[date]



Movant's Signature

RUDENKO

RECEIVED
2020 JAN 24 PM 3:39
U.S. COURT OF APPEALS
SECOND CIRCUIT

PROOF OF SERVICE

Movant must send a copy of this motion and all attachments to the attorney general of the state in which applicant was convicted.

I certify that on 1/19/2020, I mailed a copy of this motion*
[date]

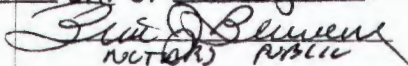
and all attachments to _____ at the following address:

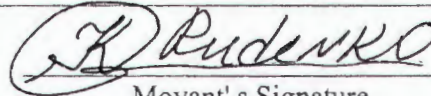
KINGS COUNTY DISTRICT ATTORNEY, 350 JAY STREET

BROOKLYN, NEW YORK 11201

SWORN TO BEFORE ME THIS

19 DAY OF January 2020


NOTARY PUBLIC



Movant's Signature

14A2378

KONSTANTIN RUDENKO

* Pursuant to FRAP 25(a), "Papers filed by an inmate confined in an institution are timely filed if deposited in the institution's internal mail system on or before the last day of filing. Timely filing of papers by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid."

BRIAN J BENWARE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01BE6334240
QUALIFIED IN FRANKLIN COUNTY
COMMISSION EXPIRES DECEMBER 14, 2023

ATTACHMENT 1 of 2

The New York State courts committed an equal protection violation by failing to allow defendant the right to file a pro se supplement brief. This was a constitutional violation under the Fourteen Amendment of the United States Constitution. Whereas the New York State courts must treat all persons or class of persons the same. Here, the New York State courts not only has a different policy in each Appellate Division Department, but also within the same Appellate Division Department itself. By giving some the defendant's the right to file and other not the same right.

The First and Second Appellate Division Departments makes it discretionary whereas the Fourth and Third Appellate Division Departments gives the defendant a right to file without asking. During the course of this litigation no federal court has addressed this claim.

This issue was contained within the body of petitioner's claims and was never addressed by the District Court, thus, the reason for petitioner

ATTACHMENT 2 of 2

request to file a second habeas corpus petition in the District court so that that court may address the issue.

Bare Hill

NEOPOST

01/22/2020

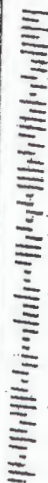
US POSTAGE



Correctional Facility

KONSTANTIN RUDENKO
14A2378
Bare Hill Corr. Fac.
Calle Box 20, 181 Brand Road
Malone, NY 12953

USM^{40LD}
SIDNEY



U.S. COURT OF APPEALS
UNITED STATES DEPARTMENT OF JUSTICE
POLEY SQUARE
NEW YORK, NY 10007

1/10/20

KONSTANTIN RUDENKO, #14-A-2378
BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

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SECOND CIRCUIT

January 20, 2020

SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, N.E.
WASHINGTON, DC 20543

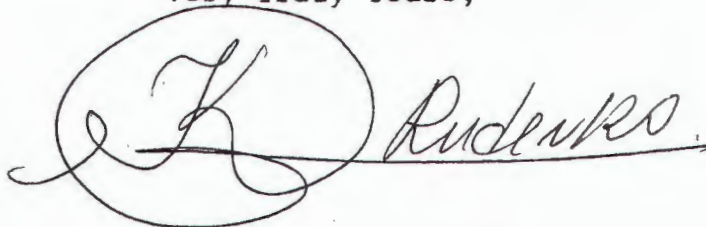
RE: KONSTANTIN RUDENKO V. COXSACKIE WARDEN
18-CV-4301 (ERK) (LB)
19-848

Dear Sir/Madam,

I am writing to Respectfully ask for the status of
a petition for Certiorari that I filed on December
29, 2019. Since that time I have filed a petition
in the United States Second Circuit Court of
Appeals to file a successive habeas corpus
petition. Since I am a little confused I have
enclosed a copy.

Very Truly Yours,

cc/FILE:

A handwritten signature in cursive script, appearing to read 'K Rudenko', is written over a large, hand-drawn oval. The signature is in dark ink and is positioned to the right of the 'cc/FILE:' text.

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B. Ground two: _____

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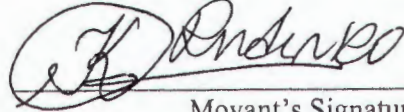
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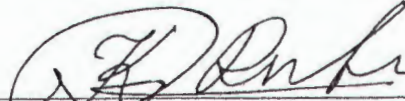


Movant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this motion are true and correct.

Executed on

1/19/2020
[date]


Movant's Signature
RUDENKO

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SECOND CIRCUIT

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I certify that on 1/19/2020, I mailed a copy of this motion*
[date]

and all attachments to _____ at the following address:

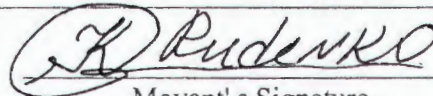
KINGS COUNTY DISTRICT ATTORNEY, 350 JAY STREET

BROOKLYN, NEW YORK 11201

SWORN TO BEFORE ME THIS

19 DAY OF January 2020


NOTARY PUBLIC



Movant's Signature

14A2378
KONSTANTIN RUDENKO

* Pursuant to FRAP 25(a), "Papers filed by an inmate confined in an institution are timely filed if deposited in the institution's internal mail system on or before the last day of filing. Timely filing of papers by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid."

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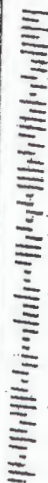
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Correctional Facility

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